IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 106 of 2002

For Approval and Signature:

Hon'ble MR.JUSTICE H.K.RATHOD

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

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GUJARAT STATE ROAD TRANSPORT CORPN.

Versus

KESHAJI N. THAKARDA

Appearance:

1. Special Civil Application No. 106 of 2002

MR SAURABH J MEHTA for Petitioner No. 1

MR PH PATHAK for Respondent No. 1

CORAM : MR.JUSTICE H.K.RATHOD

Date of decision: 18/03/2002

ORAL JUDGEMENT

#. Heard Mr.Saurabh J. Mehta, learned advocate appearing on behalf of the petitioner Corporation and Mr.P.H.Pathak, learned advocate for respondent workman.

#. In the present petition, the petitioner Corporation

has challenged the award passed by the Labour Court, Kalol in Reference No.175 / 1995 dated 9th August, 2000, wherein the labour court has granted reinstatement with continuity of service with 50 % backwages of the interim period but imposed punishment of stoppage of two increments with cumulative effect.

#. Learned advocate Mr.S.J.Mehta on behalf of the petitioner Corporation has submitted that the respondent workman was working as Driver and remained absent for the period from 19th May, 1989 to 30th June, 1989 without prior permission of the concerned authority. Thereafter, notices were served on the respondent workman even though the workman had not resumed the duties and not he had given any answer to said notices. Therefore, chargesheet was served on the respondent workman and departmental inquiry was conducted, wherein the charged was proved and therefore, show cause notice was served on the respondent. Ultimately the workman came to be dismissed from service on 3rd October, 1989. Therefore, learned advocate Mr.Mehta has submitted that the workman who remained absent for period for more than one and half months without any prior permission which resulted into great inconvenience to the Corporation on account of cancellation of schedules of bus and hence, there was great inconvenience to the public at large. Mr.Mehta, learned advocate has also submitted that the respondent workman was also in habit of remaining absent in past and and on four occasions similar misconduct of remaining absent without prior permission committed by the respondent workman. Therefore, considering his past record, according to him, dismissal order passed by the Corporation is legal and valid and therefore, the labour court has committed error in interfering with such dismissal order while exercising the powers under Section 11-A of the Industrial Disputes Act, 1947. Learned advocate Mr.Mehta for petitioner Corporation has vehemently submitted that the respondent workman dismissed from service on 3rd October, 1989 and he raised the industrial disputes after period of six years which came to be referred for adjudication on 13th July, 1995 and therefore also, the labour court has committed gross error while awarding the backwages from the date of dismissal as the labour court ought not to awarded the backwages of the delayed period in raising the dispute which is obviously slackness on the part of the respondent workman. Therefore, Mr.Mehta, learned advocate submits that the labour court has no jurisdiction to grant backwages for the period from 1989 to 1995, which also requires to be quashed and set aside by this Court.

#. Learned advocate Mr.P.H.Pathak appearing on behalf of the respondent workman has submitted that the respondent workman has remained absent for period of one and half months and the labour court has exercised the powers under Section 11-A of the I.D.Act, 1947. Mr.Pathak learned advocate submits that before the labour court, the petitioner Corporation has not produced any evidence except dismissal order and therefore in absence of any papers, it was very difficult for the labour court to decide the matter on merits and conclusion reached by the labour court in absence of the papers, supposed to be produced by the petitioner Corporation but especially when the petitioner Corporation failed to prove such papers, the labour court has rightly exercised the powers under Section 11-A of the I.D.Act while quashing the dismissal order and grant of other reliefs and as such, no error has been committed by the labour court which in any way requires interference of this Court. However, learned advocate Mr.Pathak submits that there was some delay in raising the dispute but for that, backwages cannot be denied to the respondent workman because before raising the dispute, departmental appeal was preferred before the appellate authority and some time must have been consumed in taking decision by the appellate authority and therefore the workman waited for decision of the appellate authority and that is how delay has occurred and therefore, such delay may not be taken into consideration by this Court.

#. I have considered submissions made by the learned advocates for the parties and perused the award passed by the labour court. It is true that the S.T. Corporation has not produced any inquiry papers before the labour court in respect of dismissal order and default papers and no other papers were produced before the labour court. Therefore, in absence of such papers and considering the alleged misconduct of the remaining absent for one and half month, the labour court has considered it just and proper to grant reinstatement considering the gravity of misconduct and past record and therefore, the labour court has granted reinstatement with continuity of service with 50% backwages and imposed punishment of stoppage of two increments with cumulative effect. Considering over all facts and circumstances of the matter, according to my opinion, the labour court has committed error while granting backwages for the interim period from the date of dismissal inasmuch as the respondent workman has raised the mistrial dispute after period of six years and for that the respondent workman who remained inactive and not immediately initiated the

proceedings against the Corporation. Therefore, for such delay, obviously on the part of the respondent workman, in my opinion, the petitioner should not bear any burden of backwages. Therefore, directions issued by the labour court granting 50 % backwages from the date of dismissal requires to be quashed and set aside by this Court and rest of the award passed by the labour court does not require any interference of this Court. Therefore, the award in question requires to be modified accordingly. However, the workman is entitled to 50 % backwages as awarded by the labour court for the period from the date of Reference i.e. 13th July, 1995. Except this modification, for rest of the award granting reinstatement with continuity of service, in my view, no interference is required and the same will remain intact and not disturbed by this Court. Therefore, no error has been committed by the labour court concerned while awarding reinstatement and no jurisdictional error nor any procedural irregularity committed by the labour court, which in no way require any interference of this Court while exercising the powers under Article 226 and 227 of the Constitution.

#. In view of above discussion, present petition is partly allowed. The award in question passed by the Labour Court, Kalol in Reference No.175 / 1995 dated 9th August, 2000 is modified to the effect that the respondent workman will be entitled to 50 % backwages from the date of Reference i.e. 13th July, 1995 and not from the date of dismissal. Rest of the directions, granting reinstatement with continuity of service in favour of the respondent workman and stoppage of two increments with cumulative effect stands unaltered and confirmed by this Court.

#. Learned advocate Mr.Pathak on behalf of the respondent workman submits that some suitable directions may be issued to the petitioner Corporation to implement the award in question as modified by this Court. Considering submissions of the learned advocate Mr.Pathak, it is directed to the petitioner Corporation to reinstate the respondent workman within period of one month from the date of receiving the copy of this order and make necessary payment in pursuance of the modified award in question to the respondent workman within period of three months from the date of receiving the copy of this order.

Rule is made absolute to the extent indicated above. No order as to costs. Direct Service to

respondent is permitted.

Date : 18-3-2002 [H.K.Rathod, J.]

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